

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA M JOHNSON,

Plaintiff,

v.

UNITED STATES, et al.,

Defendants.

CASE NO. C21-5242 MJP

ORDER REVOKING IFP STATUS

This matter comes before the Court on the referral notice issued by the Ninth Circuit Court of Appeals asking this Court to determine whether Plaintiff's in forma pauperis ("IFP") status should continue for the purpose of Plaintiff's appeal of the Court's Order denying her motions to remand, recuse, and in limine, Dkt. Nos. 45, 46. (Dkt. No. 50.) Having reviewed the referral notice and the relevant portions of the record, the Court revokes Plaintiff's IFP status as to her notice of appeal filed in Docket No. 46.

Title 28, section 1915(a)(3) of the United States Code states that an "appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." Id.

1 Similarly, Fed. R. App. P. 24(a)(3)(A) explains that a party who was permitted to proceed IFP in
2 the district court may proceed IFP on appeal without further authorization unless the district
3 court “certifies that the appeal is not taken in good faith or finds that the party is not otherwise
4 entitled to proceed in forma pauperis[.]” *Id.* The Ninth Circuit has also interpreted these rules to
5 allow revocation of IFP status if the appeal is frivolous. Hooker v. Am. Airlines, 302 F.3d 1091,
6 1092 (9th Cir. 2002)

7 While the Court does not find that Plaintiff’s appeal is undertaken in bad faith, it does
8 find the appeal to be frivolous. Plaintiff has already filed a notice of appeal of the Court’s
9 determination that her amended complaint’s allegations were inadequate to state a claim and the
10 Court’s denial of her motion to recuse. (Dkt. No. 30.) While the Court found that Plaintiff’s first
11 appeal was not undertaken in bad faith or frivolous, (Dkt. No. 37), Plaintiff’s new appeal is
12 frivolous. The relief Plaintiff sought in her motions (Dkt. Nos. 40, 42, 43) cannot be granted
13 given the fact her appeal of the Court’s earlier order remains pending before the Ninth Circuit.
14 (Dkt. No. 45.) There is no merit in Plaintiff’s post-appeal motions (Dkt. Nos. 40, 42, 43) and her
15 appeal of the Court’s Order (Dkt. No. 45) is frivolous. The Court therefore revokes Plaintiff’s
16 IFP status as to her appeal filed in Docket No. 46, which does not alter the Court’s earlier
17 determination declining to revoke her IFP status as to her first appeal (Dkt. No. 37).

18 The clerk is directed to provide copies of this order to Plaintiff, all counsel, and to the
19 Clerk of the Ninth Circuit.

20 Dated February 8, 2022.

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22 Marsha J. Pechman
23 United States Senior District Judge
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